

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MARK HOUSTON, *et al.*,

Plaintiffs,

v.

CENTURY 21, ADVANTAGE GOLD,
et al.,

Defendants.

2:10-cv-01097-PMP-RJJ

ORDER

Before the Court for consideration are Defendant GMAC Mortgage, LLC's Motion to Dismiss (#4) and Plaintiff's Motion to Remand (Doc. #9). On November 1, 2010, the Court heard argument on both fully-briefed motions. The Court concludes Plaintiff's Motion to Remand must be granted and Defendant's Motion to Dismiss must be denied.

Plaintiffs' complaint, filed May 24, 2010 in the Eighth Judicial District Court in and for the County of Clark, State of Nevada, Case No. A10617403-C, alleges twelve causes of action. Each of Plaintiffs' causes of action assert claims under Nevada law and scrupulously avoid reference to federal statutes as a basis for the relief requested. Nonetheless, on July 6, 2010, Defendant GMAC Mortgage, LLC, removed the action to this Court (Doc. #1) and three days thereafter filed the Motion to Dismiss now before the Court (Doc. #4). Plaintiff argues that because the state-created causes of action alleged in their complaint do not arise under federal law, do not plead federal questions, and do not state

1 claims which are preempted by federal law, this court lacks subject matter jurisdiction and
2 must remand the case to State Court. The Court agrees.

3 All of Plaintiffs' claims arise under Nevada statutory or common law and
4 resolution of those claims does not turn on a substantial question of federal law. Rivet v.
5 Regions Bank of Louisiana, 522 U.S. 470, 475 (1998); *see also*, Ultramar America, Limited
6 v. Dwell, 900 F. 2d 1412, 1414 (9th Cir. 1990). Therefore, the Court finds this action must
7 be remanded to the Eighth Judicial District Court.

8 The Court further finds that Plaintiffs' request for attorney's fees under 28 U.S.C.
9 §1447(c) should be denied. Although ultimately unsuccessful, Defendants' removal of this
10 action was not objectively unreasonable. Martin v. Franklin Capital Corporation, 546 U.S.
11 132, 141 (2005).

12 **IT IS THEREFORE ORDERED** that Plaintiffs' Motion to Remand (Doc. #9)
13 is **GRANTED** and that is action is hereby remanded to the Eighth Judicial District Court in
14 and for the County of Clark, State of Nevada under Case No. A10617403-C.

15 **IT IS FURTHER ORDERED** that Plaintiffs' Request for Attorney's Fees (Doc.
16 #9) is **DENIED**.

17 **IT IS FURTHER ORDERED** that Defendants' Motion to Dismiss (Doc. #4) is
18 **DENIED** as moot.

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20 DATED: November 2, 2010.

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23 PHILIP M. PRO
24 United States District Judge
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